

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT DISTRICT OF NEVADA
9

10 CURB MOBILITY, LLC,
11 Plaintiff,

12 v.

13 KAPTYN INC., TRIAD TRANSPORTATION
14 TECHNOLOGIES, LLC, WHITTLESEA BLUE
15 CAB COMPANY, INC. AND DESERT CAB,
16 INC.,

Defendants.

Case No. 2:18-cv-02416-MMD-GWF

STIPULATED PROTECTIVE ORDER

17
18 1. PURPOSES AND LIMITATIONS

19 Disclosure and discovery activity in this action are likely to involve production of
20 confidential, proprietary, or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
22 This Order does not confer blanket protections on all disclosures or responses to discovery and
23 the protection it affords from public disclosure and use extends only to the limited information or
24 items that are entitled to confidential treatment under the applicable legal principles. As set forth
25 in Section 14.4 below, this Protective Order does not entitle the Parties to file confidential
26 information under seal; Local Rule IA 10-5 sets forth the procedures that must be followed and
27 the standards that will be applied when a party seeks permission from the court to file material
28 under seal.

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
8 well as their support staff).

9 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

11 2.5 Designating Party: a Party or Non-Party that designates information or items that
12 are produced in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
14 SOURCE CODE.”

15 2.6 Disclosure or Discovery Material: all items or information, regardless of the
16 medium or manner in which it is generated, stored, or maintained (including, among other things,
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
18 responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
20 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
21 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
22 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
23 or of a Party's competitor.

24 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
25 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
26 Party or Non-Party would create a substantial risk of harm or a substantial business risk to the
27 Producing Party that could not be avoided by less restrictive means.

1 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
2 extremely sensitive “Confidential Information or Items” representing computer code and
3 associated comments and revision histories, formulas, engineering specifications, or schematics
4 that define or otherwise describe in detail the algorithms or structure of software or hardware
5 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
6 harm or a substantial business risk to the Producing Party that could not be avoided by less
7 restrictive means.

8 2.10 House Counsel: attorneys who are employees of a party to this action. House
9 Counsel does not include Outside Counsel of Record or any other outside counsel.

10 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
11 entity not named as a Party to this action.

12 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
13 action but are retained to represent or advise a party to this action and have appeared in this
14 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
15 that party.

16 2.13 Party: any party to this action, including all of its officers, directors, employees,
17 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

18 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this action.

20 2.15 Professional Vendors: persons or entities that provide litigation support services
21 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
22 storing, or retrieving data in any form or medium) and their employees and subcontractors.

23 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
24 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
25 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

26 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
27 Producing Party.
28

1 3. SCOPE

2 The protections conferred by this Order cover not only Protected Material (as defined
3 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
4 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
6 However, the protections conferred by this Order do not cover the following information: (a) any
7 information that is in the public domain at the time of disclosure to a Receiving Party or becomes
8 part of the public domain after its disclosure to a Receiving Party as a result of publication not
9 involving a violation of this Order, including becoming part of the public record through trial or
10 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or
11 obtained by the Receiving Party after the disclosure from a source who obtained the information
12 lawfully and under no obligation of confidentiality to the Designating Party. Any use of
13 Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations imposed by
16 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
17 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
18 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
19 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
20 action, including the time limits for filing any motions or applications for extension of time
21 pursuant to applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
24 or Non-Party that designates information or items for protection under this Order must take care
25 to limit any such designation to specific material that qualifies under the appropriate standards.
26 To the extent it is practical to do so, the Designating Party must designate for protection only
27 those parts of material, documents, items, or oral or written communications that qualify – so
28 that other portions of the material, documents, items, or communications for which protection is

1 not warranted are not swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
3 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
4 unnecessarily encumber or retard the case development process or to impose unnecessary
5 expenses and burdens on other parties) expose the Designating Party to potential sanctions.

6 If it comes to a Designating Party's attention that information or items that it designated
7 for protection do not qualify for protection at all or do not qualify for the level of protection
8 initially asserted, that Designating Party must promptly notify all other Parties that it is
9 withdrawing the mistaken designation and the information or items where the designation (if
10 any) is corrected shall be re-distributed with the proper designation (if any).

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
12 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents,
17 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
18 Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'
19 EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains
20 protected material. If only a portion or portions of the material on a page qualifies for protection,
21 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
22 appropriate markings in the margins) and must specify, for each portion, the level of protection
23 being asserted.

24 A Party or Non-Party that makes original documents or materials available for inspection
25 need not designate them for protection until after the inspecting Party has indicated which
26 material it would like copied and produced. During the inspection and before the designation, all
27 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
28 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions thereof,
2 qualify for protection under this Order. Then, before producing the specified documents, the
3 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
5 SOURCE CODE”) to each page that contains Protected Material. If only a portion or portions of
6 the material on a page qualifies for protection, the Producing Party also must clearly identify the
7 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
8 each portion, the level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings,
10 that the Designating Party identify on the record, before the close of the deposition, hearing, or
11 other proceeding, all protected testimony and specify the level of protection being asserted.
12 When it is impractical to identify separately each portion of testimony that is entitled to
13 protection, the Designating Party may have up to 21 days after receipt of the written transcript to
14 identify the specific portions of the testimony as to which protection is sought and to specify the
15 level of protection being asserted. Only those portions of the testimony that are appropriately
16 designated for protection within the 21 days shall be covered by the provisions of this Protective
17 Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days (after
18 receipt of the written transcript) afterwards, that the entire transcript shall be treated as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing,
21 or other proceeding to include Protected Material so that the other parties can ensure that only
22 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
24 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Transcripts containing Protected Material shall have an obvious legend on the title page
27 that the transcript contains Protected Material, and the title page shall be followed by a list of all
28 pages (including line numbers as appropriate) that have been designated as Protected Material

1 and the level of protection being asserted by the Designating Party. The Designating Party shall
2 inform the court reporter of these requirements. Any transcript that is prepared before the
3 expiration of the 21-day period for designation shall be treated during that period as if it had
4 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety
5 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as
6 actually designated.

7 (c) for information produced in some form other than documentary and for
8 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
9 the container or containers in which the information or item is stored the legend
10 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
11 “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the
12 information or item warrant protection, the Producing Party, to the extent practicable, shall
13 identify the protected portion(s) and specify the level of protection being asserted.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
15 designate qualified information or items does not, standing alone, waive the Designating Party’s
16 right to secure protection under this Order for such material. Upon timely correction of a
17 designation, the Receiving Party must make reasonable efforts to assure that the material is
18 treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
27 process by providing written notice of each designation it is challenging and describing the basis
28 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written

1 notice must recite that the challenge to confidentiality is being made in accordance with this
2 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
3 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
4 forms of communication are not sufficient) within 14 days of the date of service of notice. In
5 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
6 designation was not proper and must give the Designating Party an opportunity to review the
7 designated material, to reconsider the circumstances, and, if no change in designation is offered,
8 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
9 stage of the challenge process only if it has engaged in this meet and confer process first or
10 establishes that the Designating Party is unwilling to participate in the meet and confer process in
11 a timely manner.

12 6.3 Judicial Intervention. The Challenging Party may file a motion challenging a
13 confidentiality designation at any time after completing the meet and confer of Paragraph 6.2 if
14 there is good cause for doing so, including a challenge to the designation of a deposition
15 transcript or any portions thereof. Any motion brought pursuant to this provision must be
16 accompanied by a competent declaration affirming that the movant has complied with the meet
17 and confer requirements imposed by the preceding paragraph.

18 The burden of persuasion in any such challenge proceeding shall be on the Designating
19 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
20 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
21 potential sanctions. Unless the Designating Party has waived the confidentiality designation by
22 failing to file an Opposition to Challenging Party's motion as described above, all parties shall
23 continue to afford the material in question the level of protection to which it is entitled under the
24 Producing Party's designation until the court rules on the challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
27 or produced by another Party or by a Non-Party in connection with this case only for
28 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be

disclosed only to the categories of persons and under the conditions described in this Order.

When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary as mutually agreed upon by the Parties and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information lawfully and in
3 compliance with this Order.

4 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
5 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
7 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
12 Bound” that is attached hereto as Exhibit A;

13 (b) Designated House Counsel of the Receiving Party (1) who has no
14 involvement in business decision-making, (2) to whom disclosure is reasonably necessary for
15 this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
16 A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been
17 followed;¹

18 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
19 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
20 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
21 have been followed;

22 (d) the court and its personnel;

23 (e) court reporters and their staff, professional jury or trial consultants, and
24 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
25 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

26 (f) the author or recipient of a document containing the information or a
27

28 ¹ This Order contemplates that Designated House Counsel shall not have access to any
information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 custodian or other person who otherwise possessed or knew the information lawfully and in
2 compliance with this Order.

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
5 CODE” Information or Items to Designated House Counsel or Experts.

6 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
7 Designating Party, a Party that seeks to disclose to Designated House Counsel any information
8 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
9 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
10 sets forth the full name of the Designated House Counsel and the city and state of his or her
11 residence and (2) describes the Designated House Counsel’s current and reasonably foreseeable
12 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is
13 involved, or may become involved, in any competitive decision-making.

14 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
15 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
16 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph
18 7.3(c) first must make a written request to the Designating Party that (1) identifies the general
19 categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
20 CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to
21 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
22 her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the
23 Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has
24 received compensation or funding for work in his or her areas of expertise or to whom the expert
25 has provided professional services, including in connection with a litigation, at any time during
26
27
28

1 the preceding five years,² and (6) identifies (by name and number of the case, filing date, and
2 location of court) any litigation in connection with which the Expert has offered expert
3 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
4 preceding five years.

5 (b) A Party that makes a request and provides the information specified in the
6 preceding respective paragraphs may disclose the subject Protected Material to the identified
7 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
8 receives a written objection from the Designating Party. Any such objection must set forth in
9 detail the grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer with
11 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
12 agreement within seven days of the written objection. If no agreement is reached, the Party
13 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
14 provided in Local Rule IA10-5 seeking permission from the court to do so. Any such motion
15 must describe the circumstances with specificity, set forth in detail the reasons why disclosure to
16 Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the
17 disclosure would entail, and suggest any additional means that could be used to reduce that risk.
18 In addition, any such motion must be accompanied by a competent declaration describing the
19 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
20 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal
21 to approve the disclosure.

22 In any such proceeding, the Party opposing disclosure to Designated House Counsel
23 or the Expert shall bear the burden of proving that the risk of harm that the disclosure would
24 entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the
25

26 ² If the Expert believes any of this information is subject to a confidentiality obligation to a
27 third-party, then the Expert should provide whatever information the Expert believes can be
28 disclosed without violating any confidentiality agreements, and the Party seeking to disclose
to the Expert shall be available to meet and confer with the Designating Party regarding any
such engagement.

Protected Material to its Designated House Counsel or Expert.

8. PROSECUTION BAR

Absent written consent from the Producing Party, any specific individual who receives access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” containing technical information relating to credit card acceptance in taxi cabs shall not be involved in the prosecution of patents or patent applications relating to the subject matter of this action, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “specific individual” only includes the person actually receiving access and not the entire firm or staff of the “specific individual’s” company or firm. For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. Notwithstanding the foregoing, “prosecution” as used in this paragraph does not include representing a party before a domestic or foreign agency in connection with a reissue protest, *ex parte* reexamination *inter partes* reexamination, *inter partes* review or other *inter partes* proceeding of the Patent-in-Suit, so long as any amendment does not broaden the Claims of the Patent-in-Suit. This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and shall end two (2) years after final termination of this action.

9. SOURCE CODE

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it comprises or includes confidential, proprietary or trade secret source code.

(b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph

8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.

(c) Any source code produced in discovery shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon location. The source code shall be made available for inspection on a secured computer in a secured room without Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device. The Producing Party may visually monitor the activities of the Receiving Party’s representatives during any source code review, but only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

(d) The Receiving Party may request paper copies of limited portions of source code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial, but shall not request paper copies for the purpose of reviewing the source code other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all such source code in paper form, including bates numbers and the label “HIGHLY CONFIDENTIAL – SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute resolution.

(e) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare

1 court filings, pleadings, or other papers (including a testifying expert's expert report), (2)
2 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper
3 copies used during a deposition shall be retrieved by the Producing Party at the end of each day
4 and must not be given to or left with a court reporter or any other unauthorized individual.

5 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
6 LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that compels
8 disclosure of any information or items designated in this action as "CONFIDENTIAL,"
9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL
10 – SOURCE CODE," that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification shall include a
12 copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to issue in
14 the other litigation that some or all of the material covered by the subpoena or order is subject to
15 this Protective Order. Such notification shall include a copy of this Protective Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
17 Designating Party whose Protected Material may be affected.³

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or
21 "HIGHLY CONFIDENTIAL – SOURCE CODE" before a determination by the court from
22 which the subpoena or order issued, unless the Party has obtained the Designating Party's
23 permission. The Designating Party shall bear the burden and expense of seeking protection in
24 that court of its confidential material – and nothing in these provisions should be construed as
25 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
26 another court.

27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to
protect its confidentiality interests in the court from which the subpoena or order issued.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.⁴ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) if applicable, request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in a stipulated protective order submitted to the court.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

14.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and regulations relating to the export of technical data contained in such Protected Material,

1 including the release of such technical data to foreign persons or nationals in the United States or
2 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
3 data, and the Receiving Party shall take measures necessary to ensure compliance.

4 14.4 Filing Protected Material. Without written permission from the Designating Party
5 or a court order secured after appropriate notice to all interested persons, a Party may not file in
6 the public record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Local Rule IA 10-5 and the directives imposed by the
8 Ninth Circuit Court of Appeals in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172
9 (9th Cir. 2006). A Party that seeks to file under seal any Protected Material must comply with
10 Local Rule IA 10-5. Protected Material may only be filed under seal pursuant to a court order
11 authorizing the sealing of the specific Protected Material at issue. Pursuant to Local Rule IA 10-
12 5, a sealing order will issue only upon a request establishing that the Protected Material at issue
13 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
14 Receiving Party's request to file Protected Material under seal pursuant to Local Rule IA 10-5 is
15 denied by the court, then the Receiving Party may file the Protected Material in the public record
16 pursuant to Local Rule IA 10-5 unless otherwise instructed by the court.

17 15. FINAL DISPOSITION

18 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
19 Receiving Party must return all Protected Material to the Producing Party or destroy such
20 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
21 compilations, summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
23 submit a written certification to the Producing Party (and, if not the same person or entity, to the
24 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
25 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
26 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
27 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
28 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,

1 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
2 product, and consultant and expert work product, even if such materials contain Protected
3 Material. Any such archival copies that contain or constitute Protected Material remain subject to
4 this Protective Order as set forth in Section 4 (DURATION).

5
6 **IT IS SO STIPULATED**, through Counsel of Record.

7
8 Dated: May 15, 2019

KAEMPFER CROWELL

9
10 By: /s/ Robert R. McCoy
11 Robert R. McCoy
12 Joni A. Jamison
13 1980 Festival Plaza Drive, Suite 650
14 Las Vegas, NV 89135
15 Telephone No.: 702-792-7000
16 Facsimile No.: 702-796-7181
17 Email Address: rmccoy@kcnvlaw.com
18 Email Address: jjamison@kcnvlaw.com

19 and

20 GOTTlieb, RACKMAN & REISMAN, P.C.

21 By: /s/ Gloria Tsui-Yip
22 Gloria Tsui-Yip
23 270 Madison Avenue, 8th Floor
24 New York, NY 10016-0601
25 Telephone No.: 212-684-3900
26 Facsimile No.: 212-684-3999
27 Email Address: gtsuiyip@grr.com

28 **Attorneys for Plaintiff**

1 Dated: May 15, 2019

HUTCHINSON & STEFFEN, PLLC

2
3
4 By: /s/ Joseph Kistler
Joseph Kistler (3458)
Piers R. Tueller (14633)
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Telephone No.: 702-385-2500
Facsimile No.: 702-385-2086
Email Address: jkistler@hutchlegal.com
Email Address: ptueller@hutchlegal.com

9 and

10 CARR & FERRELL LLP

11
12 By: /s/ Robert J. Yorio
Robert J. Yorio
120 Constitution Drive
Menlo Park, CA 94025
Telephone No.: 650-812-3453
Facsimile No.: 650-812-3444
Email Address: yorio@carrferrell.com

17 **Attorneys for Defendants**

18
19 **IT IS ORDERED** that the forgoing Agreement is approved.

20
21 Dated: 5/17/2019


22 UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I have
5 read in its entirety and understand the Protective Order that was issued by the United States
6 District Court for the District of Nevada on _____ [date] in the case of Curb Mobility, LLC v.
7 Kaptyn Inc. et al., Case No. 2:18-cv-02416-MMD-GWF. I agree to comply with and to be bound
8 by all the terms of this Protective Order, and I understand and acknowledge that failure to so
9 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is subject to this
11 Protective Order to any person or entity except in strict compliance with the provisions of this
12 Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the District of Nevada for the purpose of enforcing the terms of this Protective Order, even if
15 such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my Nevada agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Protective Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]